

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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Alva Ray Vaughn,

Plaintiff,

vs.

SCDC, et. al.,

Defendants.

Civil Action No. 4:09-cv-3286-RMG

2010 NOV 29 A 11:39

ORDER

This *pro se* action comes before the Court on the Report and Recommendation of Magistrate Judge Thomas E. Rogers recommending partial summary dismissal of Defendants South Carolina Department of Corrections and "Lee Institutional Classification" on the bases that the actions against these State Defendants are barred by the Eleventh Amendment of the United States Constitution and not permitted under 42 U.S.C. Section 1983. The Magistrate Judge recommends that actions of these State Defendants be dismissed without prejudice and without issuance or service of process. The Magistrate Judge authorized the issuance and service of process for the remaining individually named Defendants.

This matter was automatically referred to the Magistrate Judge for pre-trial proceedings pursuant to 28 U.S.C. Section 636 (B) and Local Rule 73.02(B)(2)(e), D.S.C. The Magistrate Judge only makes a recommendation to this Court. The Court is charged with making a *de novo* review of any portions of the Report and Recommendation to which specific objection is made. The Court may accept, reject or modify, in whole or in part, the recommendation of the Magistrate Judge. 28 U.S.C. Section 636(B).

After reviewing the record of this matter *de novo*, the applicable law, the Report and

Recommendation of the Magistrate Judge and the Plaintiff's objections, the Court agrees with the conclusions of the Magistrate Judge. It is well settled that actions against the State and its entities are barred by the Eleventh Amendment, Alden v. Maine, 527 U.S. 706, 712-13 (1999), and the State and its entities are not "persons" under 42 U.S.C. Section 1983. Will v. Michigan Department of State Police, 491 U.S. 58, 65-66 (1989).

Accordingly, the Court **ADOPTS** and incorporates the Magistrate Judge's Report and Recommendation by reference into this Order. Defendants South Carolina Department of Corrections and "Lee Institutional Classification" are hereby **DISMISSED** without prejudice and without issuance or service of process. The claims against the other named Defendants are unaffected by this Order and will proceed.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

November 27, 2010
Charleston, South Carolina